REMARKS

Claims 1-10, 12-13, 15-24, 26-27, 29-39, 41-42, 44-54, 56-57, and 59-64 are pending in this application. By this Response, claims 1, 15, 16, 26, 30, 44, 45 and 59 are amended, claims 11, 14, 25, 28, 40, 43, 55, and 58 are canceled, and claims 60-64 are added. Independent claims 1, 16, 26, 30 and 45 are amended to recite: (1) configuring a at least one probe to execute a script for performing a transaction between a client computing device and a server computing device, wherein the script comprises a plurality of transaction steps for performing the transaction; (2) that the collected data is data representative of a performance of the transaction steps of the script executed by the at least one probe; and (3) a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script, having associated performance data collected from the at least one probe. Support for the addition of these features may be found at least at page 11, line 29 to page 16, line 15 and Figures 3A, 3B, 4A, and 4B of the present specification. Claims 15, 44 and 59 are amended for clarification purposes only. Reconsideration of the claims is respectfully requested in view of the following remarks.

I.   Telephone Interview

Applicants thank Examiner Pollack for the courtesies extended to Applicants' representative during the December 19, 2005 telephone interview. During the telephone interview, the above amendments to the claims and distinctions over the art of record were discussed. Examiner Pollack agreed that the above amendments to the claims overcome the prior art of record. Therefore, unless more relevant art is found in an updated search, the present application should be in condition for allowance. The substance of the telephone interview is summarized in the following remarks.

II.   Rejection under 35 U.S.C. § 112, Second Paragraph

The Office Action rejects claims 15, 44 and 59 under 35 U.S.C. § 112, second paragraph alleging that there is insufficient antecedent basis for the limitation "each script

execution" in these claims. By this Response, claims 15, 44 and 59 are amended to recite "each execution of the script." Thus, Applicants respectfully submit that claims 15, 44 and 59 are not indefinite. Applicants respectfully request withdrawal of the rejection of claims 15, 44, and 59 under 35 U.S.C. § 112, second paragraph.

III.   Rejection under 35 U.S.C. § 102(b)

The Office Action rejects claims 1, 3, 5-7, 9, 12, 19-21, 23, 30, 32, 34-36, 38, 41, 45, 47, 49-51, 53, and 56 under 35 U.S.C. § 102(b) as being allegedly anticipated by Hershey et al. (U.S. Patent No. 5,793,753). This rejection is respectfully traversed.

Claim 1, which is representative of the other rejected independent claims 30 and 45 with regard to similarly recited subject matter, reads as follows:

> 1.   A method for communicating performance information, said
> method comprising:
>   configuring a plurality of probes to execute a script for performing
> a transaction between a client computing device and a server computing
> device, <u>wherein the script comprises a plurality of transaction steps for
> performing the transaction;</u>
>   collecting data from the plurality of probes, including at least one
> local probe and at least one remote probe, <u>wherein the collected data is
> data representative of a performance of the transaction steps of the script
> executed by the plurality of probes;</u> and
>   reporting said data, wherein reporting said data comprises
> <u>generating a report that comprises a plurality of transaction step entries,
> one entry for each transaction step of the script, having associated
> performance data collected from one or more of the at least one local
> probe or the at least one remote probe.</u>

(emphasis added)

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034

(Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Applicants respectfully submit that Hershey does not identically show every element of the claimed invention arranged as they are in the claims. Specifically, Hershey does not identically show those elements of claim 1 emphasized above, or similar features found in independent claims 30 and 45.

Hershey is directed to a system for management of a telecommunications network. Hershey teaches the use of a programmable probe that is connected to a network device for monitoring data transfer activity on the network and collecting selected data relating to one or more relevant functions. The probe may be programmed to effect collection of data relative to a selected function parameter. The collected function parameter data may be received from the probe and stored. A data output device may be provided for outputting the parameter data to a user. Furthermore, Hershey teaches comparing the parameter data to a reference value and providing an indication when the parameter data deviates from the reference value by more than a preselected threshold (column 2, lines 11-55).

Hershey, however, does not teach programming a probe with a script for performing a transaction between a client device and a server device, wherein the script includes a plurality of transaction steps. To the contrary, Hershey only teaches being able to program the probe to collect data for particular functions. Hershey does not provide any script for performing a transaction between a client device and a server that includes a plurality of transaction steps. Thus, Hershey also does not teach collecting data that is representative of a performance of the transaction steps of the script.

Moreover, Hershey does not teach reporting the collected data, wherein reporting the collected data comprises generating a report that comprises a plurality of transaction step entries, one entry for each transaction step of the script, having associated performance data collected from one or more of the at least one local probe or the at least one remote probe. While Hershey states that parameter data may be output to the user via an output device, Hershey provides no details as to how such an output is provided. Specifically, Hershey does not teach that such an output comprises a report having a

plurality of transaction step entries, one entry for each transaction step of a script that is used to program the probes, and associated performance data collected from the probes.

In view of the above, Applicants respectfully submit that Hershey does not teach each and every feature of independent claims 1, 30 and 45 as is required under 35 U.S.C. § 102(b). At least by virtue of their dependency, Hershey does not teach each and every feature of dependent claims 3, 5-7, 9, 12, 19-21, 23, 32, 34-36, 38, 41, 47, 49-51, 53 and 56. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 3, 5-7, 9, 12, 19-21, 23, 30, 32, 34-36, 38, 41, 45, 47, 49-51, 53 and 56 under 35 U.S.C. § 102(b).

IV.   Rejection under 35 U.S.C. § 103(a) Based on Hershey and Schwaller

The Office Action rejects claims 2, 8, 10, 11, 13-15, 18, 22, 24, 25, 27, 28, 31, 37, 39, 40, 42-44, 46, 52, 54, 55, and 57-59 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hershey in view of Schwaller et al. (U.S. Patent No. 6,901,442). This rejection is respectfully traversed.

The deficiencies of the Hershey reference with regard to the features of independent claims 1, 30 and 45 have been discussed above. Schwaller does not provide for the deficiencies of Hershey, i.e. Schwaller does not provide the teachings or suggestions that are missing in Hershey as noted above.

Schwaller is directed to a mechanism for filtering of network performance data. Nowhere in Schwaller is there any teaching to program a probe with a script that comprises a plurality of transaction steps for performing a transaction between a client device and a server device. Schwaller merely states that the data may be collected in response to active testing of the network or passive data collection (column 7, lines 55-65). Schwaller does not provide any teaching or even suggestion regarding a script such as that recited in independent claims 1, 30 and 45.

Furthermore, Schwaller does not teach or suggest a report such as that recited in claims 1, 30 and 45. Schwaller does show various outputs in Figures 9A-13. However, in none of these outputs is there any report such as that recited in claims 1, 30 and 45. That is, none of the outputs of Schwaller show a report that comprises a plurality of

transaction step entries, one entry for each transaction step of the script, having associated performance data collected from one or more of the at least one local probe or the at least one remote probe. To the contrary, the outputs generated by Schwaller may provide performance data for a plurality of applications (see Figure 9A of Schwaller), but there is no indication of any transaction steps of a script that is used to program a probe in any of the outputs of Schwaller.

In fact, there is no ability in Schwaller to match any of the data output by Schwaller to transaction steps of a script used to program a probe. Schwaller does provide an output of a distribution of response times for transactions (see Figure 10.C.1), however, there is no indication of the individual transaction steps for the transactions or the corresponding performance data for such transaction steps in any of the outputs provided by Schwaller. Thus, Schwaller, like Hershey, does not teach or suggest the features of independent claims 1, 30 and 45. Since neither reference teaches or suggests these features, any alleged combination of the references, even if such a combination were possible and one of ordinary skill in the art were somehow motivated to make such a combination, would not result in these features being taught or suggested.

In view of the above, Applicants respectfully submit that neither Hershey nor Schwaller, either alone or in combination, teach or suggest the features of independent claims 1, 30 and 45. At least by virtue of their dependency on claims 1, 30 and 45, respectively, neither Hershey nor Schwaller, either alone or in combination, teach or suggest the features of dependent claims 2, 8, 10, 11, 13-15, 18, 22, 24, 25, 27, 28, 31, 37, 39, 40, 42-44, 46, 52, 54, 55, and 57-59. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2, 8, 10, 11, 13-15, 18, 22, 24, 25, 27, 28, 31, 37, 39, 40, 42-44, 46, 52, 54, 55, and 57-59 under 35 U.S.C. § 103(a).

V.   Rejection under 35 U.S.C. § 103(a) Based on Hershey and DeLuca

The Office Action rejects claims 4, 16, 17, 26, 29, 33, and 48 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Hershey in view of DeLuca et al. (U.S. Patent No. 6,792,455). This rejection is respectfully traversed.

The deficiencies of the Hershey reference with regard to the features of independent claims 1, 30 and 45, from which claims 4, 33 and 48 depend, respectively, have been discussed above. Furthermore, independent claims 16 and 26 have been amended to include features similar to those of claims 1, 30 and 45 which are not taught or suggested by Hershey as discussed above. DeLuca does not provide for the deficiencies of Hershey, i.e. DeLuca does not provide the teachings or suggestions that are missing in Hershey as noted above.

DeLuca is directed to a mechanism for implementing polling agents in a client management tool. DeLuca is cited by the Office Action as allegedly teaching a method of performing monitoring of network clients that includes service level agreement monitoring. Nowhere in DeLuca is there any teaching to program a probe with a script that comprises a plurality of transaction steps for performing a transaction between a client device and a server device. DeLuca does not provide any teaching or even suggestion regarding a script such as that recited in independent claims 1, 16, 26, 30 and 45.

Furthermore, DeLuca does not teach or suggest a report such as that recited in claims 1, 30 and 45 or the reported results of claims 16 and 26. None of the screenshots provided in the figures of DeLuca provide any report or results such as those recited in independent claims 1, 16, 26, 30 and 45. In fact, there is no ability in DeLuca to match any of the data output by DeLuca to transaction steps of a script used to program a probe. Thus, DeLuca, like Hershey and Schwaller above, does not teach or suggest the features of independent claims 1, 16, 26, 30 and 45. Since none of the references teach or suggests these features, any alleged combination of the references, even if such a combination were possible and one of ordinary skill in the art were somehow motivated to make such a combination, would not result in these features being taught or suggested.

In view of the above, Applicants respectfully submit that neither Hershey nor DeLuca, either alone or in combination, teach or suggest the features of independent claims 1, 16, 26, 30 and 45. At least by virtue of their dependency on claims 1, 16, 26, 30 and 45, respectively, neither Hershey nor DeLuca, either alone or in combination, teach or suggest the features of dependent claims 4, 17, 29, 33, and 48. Accordingly,

Applicants respectfully request withdrawal of the rejection of claims 4, 16, 17, 26, 29, 33, and 48 under 35 U.S.C. § 103(a).
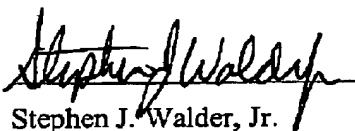
VI.   Newly Added Claims 60-64

Claims 60-64 are added to recite additional features of the present invention. Specifically, claims 60-64 are added to recite outputting/means for outputing the report/reported results to a user, wherein the output of the report/reported results comprises a table having at least one row for each execution of the script and columns ordered according to an order of transaction steps in the script. Support for these features may be found at least in Figures 3A, 3B, 4A and 4B of the present specification. None of the cited references, whether taken alone or in combination, teach or suggest the features of claims 60-64.

VII.   Conclusion

It is respectfully urged that the subject application is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,

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